

**HEARING DATE: September 5, 2019**  
**HEARING TIME: 1:00 P.M.**  
**LOCATION: Tacoma, Washington**  
**RESPONSE DATE: August 29, 2019**

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Michael G. Malaier  
Chapter 13 Standing Trustee  
2122 Commerce Street  
Tacoma, WA 98402  
(253) 572-6600

1 If you fail to do so, the Court may enter an order granting the motion without any hearing and  
2 without further notice.

3 **MOTION**

4 **COMES NOW**, Michael G. Malaier, the Standing Chapter 13 Trustee, (“Trustee”) by  
5 and through his attorney, Matthew J.P. Johnson, and moves the Court for an order approving the  
6 compromise of the claims in complaint filed under Adversary Number 19-04021-MJH.

7 **BACKGROUND**

8 Debtor filed a petition for relief under Title 11, chapter 13, or the United State Code on  
9 October 13, 2018. On April 18, 2019, Trustee filed a complaint for recovery of \$17,131.50  
10 from LendingClub Corporation (“LendingClub”) under 11 U.S.C. § 547. LendingClub filed an  
11 answer denying the allegations in the complaint, and raising various affirmative defenses.

12 The parties have agreed to a settlement of \$9,000.00 to be paid within thirty days of the  
13 date of the order approving settlement. *See* attached Exhibit A. The parties wish to settle this  
14 agreement due to the limited amount of funds in controversy compared with the time and cost for  
15 litigation of this issue. Further, LendingClub has raised defenses and provided documents  
16 indicating that the loan may have been canceled prior to disbursement. Due to the uncertainty of  
17 outcome for either party, the parties believe that the settlement \$9,000.00 is fair and reasonable.

18 LendingClub will have an allowed claim pursuant to 11 U.S.C. § 502(h), after receipt of  
19 the settlement funds by the trustee. The adversary proceeding will be dismissed with prejudice;  
20 provided, however, that the adversary case may be reopened to address any issues that arise in  
21 the implementation of the settlement. A copy of the settlement agreement is attached hereto as  
22 Exhibit A.  
23  
24  
25

**AUTHORITY**

The court has great latitude in approving compromise agreements and may approve a compromise if it is “fair and equitable.” *In re Woodson*, 839 F. 2nd 619, 620 (9th Cir. 1988). An order approving a compromise will be upheld absent abuse of discretion. *In re A & C Properties*, 784 F. 2nd 1977 (9th Cir. 1986). To determine whether a compromise is fair and equitable, the court should consider the probability of success in the litigation, the difficulties to be encountered in collection, the litigations’ complexity and its attendant expense, inconvenience and delay, and the paramount interest of the creditors with a proper deference to their reasonable views. *In re MGS Marketing*, 111 B.R. 264 (9th Cir. BAP 1990); *In re Woodson, supra*; *In re A & C Properties, supra*.

A compromise should be approved if the trustee establishes to the reasonable satisfaction of the court that it is prudent to eliminate the risks and delays of litigation to achieve certainty rather than a possible ultimate recovery. *In re Central Ice Cream Co.*, 59 B.R. 476, 487-488 (Bankr. N.D. Ill. 1985). The court’s responsibility is to canvass the issues and see whether the settlement “falls below the lowest point in the range of reasonableness.” *In re Heissinger Resources Ltd.*, 67 B.R. 378, 383 (C.D. Ill, 1986)( citing, *In re W.T. Grant Co.*, 699 F.2nd 599, 608 (2nd Cir. 1983)).

Trustee believes that the settlement is reasonable and fair and satisfies the factors set forth in *In re A & C Properties*, 784 F. 2nd 1977 (9th Cir. 1986).

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